

RAL

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE MILPITAS REDEVELOPMENT AGENCY AND HARDISON KOMATSU IVELICH & TUCKER**

THIS AGREEMENT for consulting services is made by and between the Milpitas Redevelopment Agency ("RDA") and Hardison, Komatsu, Ivelich & Tucker, (HKIT) ("Consultant") as of December 11, 2003.

**AGREEMENT**

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to RDA the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on January 31, 2004, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The Consultant shall provide a preliminary submission no later than December 19, 2004. The time provided to Consultant to complete the services required by this Agreement shall not affect the RDA's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Professional Skill.** It is mutually agreed by the parties that RDA is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the RDA that its work shall conform to the highest and best professional standards of the profession. Acceptance of the Consultant's work by the RDA does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to the highest standards of accuracy, completeness and coordination.
- 1.4 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that RDA, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from RDA of such desire of RDA, reassign such person or persons.

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- 1.5 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

**Section 2. COMPENSATION.** RDA hereby agrees to pay Consultant on a time and material basis not to exceed \$15,000.00 for all services to be performed and reimbursable costs incurred under this Agreement. RDA shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from RDA to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to RDA in the manner specified herein. Except as specifically authorized by RDA, Consultant shall not bill RDA for duplicate services performed by more than one person.

Consultant and RDA acknowledge and agree that compensation paid by RDA to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subconsultants of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subconsultants may be eligible. RDA therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills; ("Invoice #")
- The beginning and ending dates of the billing period;
- A Task Summary containing the RDA project name and number, purchase order number, Project Manager, original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At RDA's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subconsultant of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subconsultant of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

- 2.2 **Monthly Payment.** RDA shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. RDA

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shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the RDA to pay Consultant. Ten (10) percent shall be retained by the RDA from each contract billing until the completion of the contract unless authorized differently by RDA. In the event that an invoice is not acceptable to the RDA, said invoice shall be returned to Consultant within thirty (30) days of the RDA's receipt of the invoice with a detailed explanation of the deficiency. RDA's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

- 2.3 Total Payment.** RDA shall pay for the services to be rendered by Consultant pursuant to this Agreement. RDA shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. RDA shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the RDA and shall provide a written not-to-exceed price for performing this additional work. Consultant shall not perform extra work without specific RDA approval.

- 2.4 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.
- 2.5 Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed Two Thousand Dollars (\$2,000).
- 2.6 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.7 Payment upon Termination.** In the event that the RDA or Consultant terminates this Agreement pursuant to Section 8, the RDA shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The RDA shall have no obligation to compensate Consultant for work not verified by logs or timesheets.
- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the RDA.

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**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. RDA shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

RDA shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with RDA employees and reviewing records and the information in possession of the RDA. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of RDA. In no event shall RDA be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the RDA's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the RDA.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subconsultants. Consultant shall provide proof satisfactory to RDA of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the RDA. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the RDA upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subconsultant to commence work on any subconsultant until Consultant has obtained all insurance required herein for the subconsultant(s) and provided evidence thereof to RDA. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the RDA Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the RDA and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

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An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the RDA.

#### **4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. RDA and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insured with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to RDA or its officers, employees, agents, contractors, consultants, or volunteers.

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- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the RDA and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the RDA shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to RDA and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the RDA.

**4.3 Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

**4.4 Requirements for All Policies.**

**4.4.1 Acceptability of Insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

**4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish RDA with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The RDA reserves the right to require complete, certified copies of all required insurance policies at any time.

**4.4.3 Subconsultants.** Consultant shall include all subconsultant s as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subconsultant s shall be subject to all of the requirements stated herein.

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**4.4.4 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of RDA for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the RDA, Consultant may increase such deductibles or self-insured retentions with respect to RDA, its officers, employees, agents, contractors, consultants, and volunteers. The RDA may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the RDA.

**4.4.5 Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to RDA at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

**4.5 Remedies.** In addition to any other remedies RDA may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, RDA may, at its sole option exercise any of the following remedies, which are alternatives to other remedies RDA may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

**4.6 Waiver.** The Risk Manager of the RDA has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

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**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

Consultant shall indemnify, and hold harmless the RDA and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable. The foregoing obligation of Consultant shall not apply to the extent (1) the injury, loss of life, damage to property, or violation of law arises from the negligence or willful misconduct of the RDA or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by RDA of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subconsultant of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of RDA, Consultant shall indemnify, defend, and hold harmless RDA for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subconsultants, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of RDA.

**Section 6. STATUS OF CONSULTANT.**

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of RDA. RDA shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, RDA shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other RDA, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subconsultants providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by RDA, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of RDA and entitlement to any contribution to be paid by RDA for employer contributions and/or employee contributions for PERS benefits.



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- 6.2 **Consultant No Agent.** Except as RDA may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of RDA in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind RDA to any obligation whatsoever.

## **Section 7. LEGAL REQUIREMENTS.**

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subconsultant s shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which RDA is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to RDA that Consultant and its employees, agents, and any subconsultants have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to RDA that Consultant and its employees, agents, any subconsultants shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subconsultant s shall obtain and maintain during the term of this Agreement valid business license from RDA.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subconsultant , bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the RDA or this Agreement.

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**Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** RDA may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. RDA, however, may condition payment of such compensation upon Consultant delivering to RDA any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the RDA in connection with this Agreement.

- 8.2 **Extension.** RDA may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if RDA grants such an extension, RDA shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the RDA, RDA shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 **Amendments.** The parties may amend this Agreement only by a written amendment signed by all the parties.

- 8.4 **Assignment and Subcontracting.** RDA and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to RDA for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the RDA. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subconsultant s listed in the Consultant's proposal, without prior written approval of the RDA.

- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between RDA and Consultant shall survive the termination of this Agreement.

- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, RDA's remedies shall include, but not be limited to, any or all of the following:

- 8.6.1 Immediate cancellation of the Agreement;

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- 8.6.2** Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
- 8.6.3** Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

**Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, calculations, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the RDA. Consultant hereby agrees to deliver those documents to the RDA at any time upon demand of the RDA. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the RDA and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the RDA within the time period specified by the RDA shall be a material breach of this Agreement. RDA and Consultant agree that, until final approval by RDA, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the RDA in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties. All work product submitted to the RDA pursuant to this Agreement shall be deemed a "work for hire". Upon submission of any work for hire pursuant to this Agreement, and acceptance by the RDA as complete, non-exclusive title to copyright of said work for hire shall transfer to the RDA. The compensation recited in Exhibit B shall be deemed to be sufficient consideration for said transfer of copyright
- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the RDA under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the RDA. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State

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Auditor, at the request of RDA or as part of any audit of the RDA, for a period of three (3) years after final payment under the Agreement.

**Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of RDA or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any RDA official in the work performed pursuant to this Agreement. No officer or employee of RDA shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

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Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the RDA. If Consultant were an employee, agent, appointee, or official of the RDA in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the RDA for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it *may be subject to criminal prosecution for a violation of Government Code § 1090* and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Ownership of Documents.** All documents developed or obtained by Consultant in the performance of the Agreement shall be deemed to be the property of the RDA.
- 10.10 **Contract Administration.** This Agreement shall be administered by **Blair King**, who is authorized to act for, and on behalf of RDA. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.1 **Notices.** Any written notice to Consultant shall be sent to:

Richard Caldwell, AIA, Principal  
HKIT  
538 Ninth Street, Suite 240  
Oakland, CA 94607

Any written notice to RDA shall be sent to:  
Blair King, Assistant City Manager  
455 East Calaveras Boulevard  
Milpitas, California 95035

## PROJECT NAME:

Senior Housing/Health Clinic Consulting Service Agreement

RDA Approval -

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10.11 Professional Seal. Where applicable in the determination of the RDA, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.12 Record Drawing. At the end of construction, the consultant shall prepare a record drawing using the red-lined plans to be provided by the RDA. The record drawing shall incorporate all changes made during construction in the field to show the actual record of construction.

10.13 Integration. This Agreement, including the exhibits, represents the entire and integrated agreement between RDA and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.14 Exhibits. All exhibits referenced in this Agreement are incorporated by reference herein.

MILPITAS REDEVELOPMENT AGENCY

CONSULTANT

\_\_\_\_\_  
Thomas J. Wilson, RDA Executive Director



Harrison, Komatsu, Ivelich &amp; Tucker

APPROVED AS TO FORM:

Taxpayer Identification Number

94-1585540

\_\_\_\_\_  
Steven T. Mattas, RDA Attorney

## Attachments:

Exhibit A: Scope of Services  
Exhibit B: Compensation Schedule, personnel and rates

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**EXHIBIT A**

**SCOPE OF SERVICES**

The purpose of this consulting agreement is to enable the City of Milpitas and the County of Santa Clara to determine if a County Health Clinic, 100 Senior affordable apartments with associated ancillary needs, parking, and other minor uses could be developed on a 3.31 acre site on the westerly side of North Main Street between Weller Lane and Calaveras Boulevard.

Specifically, the following uses are to be considered:

- 1) A health clinic, including parking, of size and scope suitable to Santa Clara County;
- 2) 100 Senior affordable apartments with the following specifications:
  - a. 600 square foot units,
  - b. 100 parking stalls,
  - c. Shared laundry facilities,
  - d. 1800 square foot multi-use room;
- 3) 2,500 square foot office space that must be located on the north east corner of the site.

The consultant shall provide, at a minimum, three viable alternative scenarios that consider factors such as parking organization, ingress and egress, function, compatibility, and any other factors that, in the consultant's professional opinion, should be considered. The consultant shall be provided with health clinic standards by the Agency from data provided by Anshen & Allen. If the consultant concludes that the various uses can be accommodated without relocation of the existing central house on the site, this scenario should be presented. At least one of the scenarios must show the location of the health clinic on the 1.005 acre site identified as APN 2208003. In this scenario, it is assumed that the consultant may need to show a pedestrian bridge linking the properties. If, at a minimum, three alternative scenarios are not viable, the consultant should present the alternative(s) that is viable and provide his reasons and explanations why the other(s) are not. At a minimum, the consultant shall present his findings in the form of massing diagrams.

The consultant will provide a general comparison of costs of the alternative scenarios against each other and against hypothetical costs of a comparable health clinic and senior housing facility.

**DUE DATE** – A preliminary final submission shall be due December 19<sup>th</sup>. The final submission shall be due within four days of the receipt of comments from the City/Agency.

**PERSONNEL ASSIGNED** – Richard Caldwell shall be assigned and personally participate in this engagement. Hourly costs shall be in accordance with the attached schedule.

PROJECT NAME:  
Senior Housing/Health Clinic Consulting Service Agreement

RDA Approval -

PROJECT NO.:

DATE:

**EXHIBIT B**

**COMPENSATION SCHEDULE**

**HARDISON KOMATSU IVELICH & TUCKER**

**HOURLY BILLING RATE SHEET**  
Effective January 1, 2004

| <u>CLASSIFICATION AND<br/>PAYROLL CODE NUMBER</u>        | <u>RANGE OF ACTUAL<br/>BILLABLE HOURLY RATES</u> |
|--|--|
| A-1 Principal-in-Charge                                  | \$150  |
| A-2 Project Manager                                      | \$120 - \$130                                    |
| A-3 Job Captain  | \$85 - \$100                                     |
| S-1 Senior Specification<br>Research/Writer              | \$120 - \$130                                    |
| S-2 Specification Research/Writer                        | \$75 - \$100                                     |
| C-1 Senior Construction Administrator                    | \$100 - \$125                                    |
| C-2 Construction Administrator                           | \$75 - \$100                                     |
| D-1 Senior Project Designer<br>Project Interior Designer | \$94 - \$104                                     |
| D-2 Designer/Interior Designer                           | \$67 - \$96                                      |
| D-3 Senior Draftsperson                                  | \$67 - \$96                                      |
| D-4 Intermediate Draftsperson                            | \$55 - \$73                                      |
| D-5 Apprentice Draftsperson                              | \$41 - \$55                                      |
| T-1 Technical Assistant                                  | \$57 - \$85                                      |
| T-2 Technical Typist                                     | \$40 - \$60                                      |
| T-3 Production Technician                                | \$40 - \$60                                      |